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January 18, 1996

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1900 M Street, N. W.
Washington, D. C. 20554

Re: ET Docket No. 95-183, RM 8553
PP Docket No. 93-253

Dear Mr. Caton:

Transmitted herewith on behalf of Telephone and Data Systems, Inc. are an original and nine copies of its Comments in response to the Commission's Notice of Proposed Rulemaking and Order released December 15, 1995 in the above-captioned proceeding.

Waiver of the January 16, 1996 filing deadline for comments in this proceeding is requested to permit the above-referenced Comments of Telephone and Data Systems, Inc. to be considered as part of the formal docket record. Our request involves only a brief delay beyond the January 16 deadline, should not significantly burden other parties, and results in part from the extraordinary winter weather conditions in the Washington, D. C. area. In addition, we understand that petitions for reconsideration of the Commission's NPRM and Order in this proceeding have been filed so that grant of the brief extension requested here is unlikely to result in any prejudicial delay.

In the event there are any questions concerning this matter, please communicate with the undersigned.

Very truly yours,

George Y. Wheeler

Enclosure

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

In the Matter of	)	
	)	
Amendment of the Commission's Rules Regarding the 37.0-38.6 GHz and 38.6-40.0 GHz Bands	)	ET Docket No. 95-183 RM-8553
	)	
Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, 37.0-38.6 GHz and 38.6-40.0 GHz	)	PP Docket No. 93-253

To: The Commission

COMMENTS OF
TELEPHONE AND DATA SYSTEMS, INC.

Telephone and Data Systems, Inc., on behalf of itself and its subsidiaries (collectively "TDS"), by its attorneys submits its comments in response to the Commission's Notice of Proposed Rulemaking and Order released December 15, 1995 in the above-captioned proceeding ("37/39 GHz NPRM").

INTRODUCTION

TDS has actively supported the early development and implementation of emerging technologies such as those proposed in the Commission's 37/39 GHz NPRM which promise to improve and expand technology options available to the telecommunications industry. TDS's telephone exchange facilities, which are primarily located in rural areas, small towns and some suburban communities utilize point-to-point microwave spectrum for communications links in areas where wireless facilities are the most cost effective and in some cases, the only viable technology to meet the needs of its

subscribers. U.S. Cellular, TDS's cellular subsidiary, which serves over 600,000 subscribers in thirty-two states, holds more than 1,000 licenses for point-to-point microwave facilities which are used as backbone and backhaul links. TDS's subsidiary, American Portable Telecommunications, Inc. (APT) was the successful bidder for eight broadband PCS licenses in the major trading areas of Minneapolis-St. Paul, Tampa-St. Petersburg-Orlando, Houston, Pittsburgh, Kansas City, Columbus, Alaska and Guam. APT projects that it will be offering services by early 1997 and that its deployment of new base stations, including necessary backhaul and backbone links, will be continuing on an accelerated schedule to provide widespread availability of PCS services for its customers.

As a company actively interested in developing new subscriber-based telecommunications service capabilities, TDS supports allocation of additional spectrum in the 37 GHz band to expand spectrum resources for point-to-point uses as described in the Commission's 37/39 GHz NPRM. It also supports the efforts of the Commission to harmonize the licensing of the 37 and 39 GHz fixed point-to-point microwave bands in Parts 21 and 94 of the rules to promote spectrum efficient and cost effective access to essential spectrum resources.

We do not comment here on the Commission's proposals with respect to incumbent licensees in the 39 GHz band and the processing of certain pending applications for 39 GHz licensing. We hold no such licenses and have no pending applications in this band. In general, we strongly support the rights of all incumbent licensees

and applicants to have reasonable expectations to be permitted to deploy their proposed facilities and to have their applications processed in accordance with the Commission's rules and procedures. The Commission has a difficult task to support in an appropriate way these reasonable expectations while it is attempting to establish a successor regulatory structure for the 39 GHz band.

DISCUSSION

We recommend that the Commission expand its proposals to assure that a substantial portion of the 37/39 GHz spectrum allocation will be available on a link-by-link licensing basis to meet the needs of large and small companies for point-to-point uses. In the following sections of these comments we discuss the benefits of link-by-link licensing and we recommend adoption of rules and policies to permit at least half of the 37/39 GHz paired spectrum to be licensed on a link-by-link basis. We also support adoption of eligibility restrictions which would apply to link-by-link licensing only to promote access to 37/39 GHz spectrum for broadband PCS, cellular and wide-area SMR uses.

Need for Additional Spectrum

We agree with the assertions of the Fixed Point-to-Point Microwave Section of the Telecommunications Industry Association (TIA) that additional 37 GHz spectrum is needed to satisfy point-to-point communications needs of cellular and broadband PCS systems, of common carriers providing short-haul "last mile" links, and of private companies for internal communications needs. While

we do not preclude the possibility of technology developments and service applications which could lead to significant use of 37/39 GHz spectrum for mobile services and point-to-multipoint uses, we expect that for the foreseeable future the uses of this spectrum in the vast majority of market areas will be for point-to-point links.

Based on projected spectrum needs in the 37 GHz band, we believe the use of the 37.0-37.7 and 37.7-38.6 GHz bands to create 14 new pairs of 50 MHz channel blocks and four unpaired 50 MHz channel blocks is fully justified. At least half of the 37/39 GHz paired channel blocks should be allocated solely for point-to-point uses. If the Commission concludes in these proceedings that there is at least some demonstrated need for 37 GHz allocations to provide mobile and point-to-multipoint capabilities, we recommend that the four unpaired 37 GHz channel blocks be allocated on a flexible use basis to permit such uses in addition to point-to-point uses.

Service Areas

We support the Commission's efforts to establish 37 and 39 GHz licensing opportunities which promote "...a more orderly structure for the licensing process than allowing each license to define its own service area."[1] We believe the preferred approach should offer licensing options to fit the range of spectrum needs which TIA has identified.

BTA service area licensing will meet the needs of companies proposing to implement networks covering metropolitan and adjacent

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[1] 37/39 GHz NPRM, Para. 22.

areas, including broadband PCS, cellular, SMR and other network providers. BTA service area licensing provides competitive market entry opportunities to companies of all sizes, promotes spectrum efficient frequency uses, and, subject to appropriate buildout standards, encourages rapid and widespread deployment of new and innovative services.

We strongly oppose adoption of service area categories any larger than BTA boundaries because of the substantial public interest benefits from BTA licensing. If there are bidders who plan to implement systems encompassing areas larger than any individual BTA, adoption of simultaneous auction procedures as proposed by the Commission (37/39 GHz NPRM, Para. 34) will give them opportunities to aggregate BTA service areas to meet their needs.

We also support the TIA proposal to continue licensing options for companies to apply on a link-by-link basis. Our experience indicates that frequency coordination based on established procedures in other bands will promote the spectrum efficient use of the channel blocks to be licensed on a link-by-link basis and will deter speculation and warehousing. We share TIA's concerns that the Commission should preserve licensing opportunities for common carrier and private users who only need a limited number of microwave links in a particular area.

While TIA has emphasized the needs of private users, we believe that the needs of small telephone companies to have access to 37 and 39 GHz spectrum on a link-by-link basis are equally

valid. The geographic partitioning options which the Commission claims will assist "rural telephone companies"[2] do not cover a substantial number of the small independent telephone companies servicing rural areas. For example, none of the approximately 100 TDS telephone companies serving rural areas in 28 states would qualify for such geographic partitioning because the aggregate number of access lines served by these companies exceeds the limits provided in Section 24.720(e) of the FCC rules. This means that the only recourse for these companies to obtain access to 37/39 GHz spectrum (absent link-by-link licensing as proposed here) is to have unrelated third parties be licensed for the spectrum to be used in the day-to-day operations of these telephone companies. We strongly oppose adoption of policies which would have this result.

We do not make recommendations regarding the specific paired channel blocks to be licensed as BTA service areas and those to be licensed on a link-by-link basis. We recommend that the Commission retain at least half of the paired 37 and 39 GHz channel blocks for link-by-link licensing.[3] The other half would then be available for licensing on a service area basis.

Licensing Method

As discussed above, we support adoption of link-by-link licensing for at least half of the available paired 37 and 39 GHz spectrum for point-to-point uses. We also support use of competi-

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[2] Id., Paras. 89-90.

[3] The four unpaired channel blocks might appropriately be licensed on a BTA service area basis.

tive bidding selection for all remaining paired and all unpaired channel blocks in these bands.

Link-by-link licensing on 39 GHz channel blocks would provide for spectrum efficient new and expanded third party uses of the same channel blocks on which incumbent licensees are "grandfathered."[4] The need for "repacking"[5] of incumbent licensee spectrum uses would be avoided. In addition, incumbent licensees could retain the right to expand their existing networks on a link-by-link basis subject only to routine frequency coordination and other Commission licensing procedures.

We do not recommend that the Commission limit link-by-link licensing to 39 GHz channel blocks. We believe that a portion of the 37 GHz spectrum should also be licensed on a link-by-link basis to provide licensing opportunities to new users while incumbent 39 GHz licensees are attempting to qualify for exclusive spectrum rights under one or another of the proposals outlined in the Commission's 37/39 GHz NPRM, paras. 105-109. In addition, 37 GHz spectrum may be needed for link-by-link licensing by new users after the period for such qualification has concluded if the incumbent licensees obtain pervasive exclusive spectrum rights particularly in metropolitan markets where 39 GHz spectrum is now unavailable.

Regarding the Commission's competitive bidding proposals, we support use of the Commission's proposed simultaneous multi-round

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[4] Id., Para. 105.

[5] Id., Para. 109.

auction methodology for licensing that part of the available 37/39 GHz spectrum which is not licensed on a link-by-link basis. We believe that this approach is consistent with the use of BTA service areas, permits market value interdependencies to be reflected in the bidding and permits aggregation opportunities if any bidder is planning to implement a regional network.

Eligibility

We also support adoption of eligibility restrictions in connection with licensing of 37/39 GHz spectrum on a link-by-link basis. Our recommendation would be to restrict eligibility for such link-by-link licensing to broadband PCS licensees on at least six of the paired channel blocks "...until three months after the last broadband PCS license is issued."[6] Eligibility on an additional eight paired channel blocks "...would be limited to broadband PCS, cellular, and wide-area SMR licensees for three years, commencing on the effective date of the rules adopted in this proceeding."[7]

Eligibility to hold licenses for paired and unpaired channel blocks allocated on a service area basis would not be restricted under our proposals.

Spectrum Cap

We agree with the FCC's goal to ensure that there are an adequate number of licenses available to meet the needs of broadband PCS, cellular and other wireless providers in each market

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[6] Id., Para 102.

[7] Ibid.

area. We believe that implementation of link-by-link licensing as proposed here will help to achieve this goal.

Even if link-by-link licensing is adopted as proposed here, we believe that there remains a need for a spectrum cap limiting the aggregation of 37 and 39 GHz channel blocks licensed on a service area basis. Under our proposed spectrum cap, spectrum licensed on a link-by-link basis would not count towards the cap. Only channel blocks licensed on a service area basis would be counted.

We recommend that the Commission's proposed limit of paired channel blocks for any licensee be reduced from six to three and that the Commission's proposed limit for unpaired channel blocks be unchanged. This reduction is reasonable considering the availability of other 37/39 GHz spectrum to meet link-by-link needs.

CONCLUSION

Our comments supporting link-by-link licensing as a supplement to competitive bidding selection reflect the diverse needs of a broad range of wireless providers who are using or can be expected to use 37 and 39 GHz links to meet backhaul, backbone, "last mile" and other requirements. The timing of their market entry, the scope of the technology options available to each and the intensity and duration of their anticipated 37/39 GHz spectrum uses are open to considerable conjecture. We believe these uncertainties require adoption of Commission policies which assure the continuing availability of 37 and 39 GHz spectrum under link-by-link licensing so that these providers have a reliable basis for planning future

expansions and modifications of point-to-point links. The Commission should adopt rules and policies promoting spectrum efficient link-by-link licensing and limiting the aggregation of channel blocks licensed on a service area basis by imposing spectrum cap restrictions to assure a diverse and competitive marketplace.

Respectfully submitted,

TELEPHONE AND DATA SYSTEMS, INC.

By /s/ George Y. Wheeler
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